

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2001-000630

11/08/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

B DON TAYLOR

v.

JOSE A CHACON

JAMES J SYME

FINANCIAL SERVICES-CCC  
PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8960262

Charge: ASSAULT

DOB: 12/29/76

DOC: 03/24/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has taken this matter under advisement, listened to the tape-recorded record of trial from the Phoenix City Court, reviewed the memoranda of counsel, and heard oral arguments Oct. 16, 2002.

Following a 911 complaint from Ms. Celine Reyes – victim in this case – police officers were dispatched in the early morning hours of May 24, 2001 to Ms. Reyes' residence where, at Docket Code 513

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the invitation of victim's brother, a group had congregated<sup>1</sup> in the home and was fighting.<sup>2</sup> According to the account provided at trial by the victim and corroborated by police officers, Ms. Reyes identified the Defendant, Mr. Chacon, as the person who had assaulted her at approximately 1:45 a.m. that morning.<sup>3</sup>

The only issue before this court is whether Defendant/Appellant's lack of remorse, after he consistently maintaining his innocence, could be considered an aggravating factor in his being sentenced to the maximum jail term (30 days) and the maximum fine (\$885).<sup>4</sup> This court rules such a consideration was improper, reverses the sentence, and remands this case to the trial court for resentencing in a manner not inconsistent with this opinion.

After hearing this case and receiving testimony from witnesses, including the Defendant, the trial judge found Appellant guilty. He then asked the Appellant if he wanted to speak, but the Appellant declined<sup>5</sup> as was his right.<sup>6</sup> At that point, the trial judge indicated, to Appellant:

So what we are left with Mr. Chacon, is this Court's finding that you assaulted this woman in the privacy of her home. You are not accepting responsibility for it, not admitting guilt, not remorseful. You assault[ed] her [while she was] trying to call the police for assistance [while she was] with her children in the home. You have falsely testified about your not assaulting her. Probation certainly is not appropriate because you don't have any remorse or acceptance of responsibility.<sup>7</sup>

As the Arizona Court of Appeals, Division 1, said relative to a nearly identical issue,

Defendant's lack of contrition is, for legal purposes, tantamount to a refusal to admit guilt. As contrition or remorse necessarily imply (sic) guilt, it would be irrational or disingenuous to expect or require one who maintains his innocence to express contrition or remorse. A convicted defendant's decision not to publicly admit guilt is irrelevant to a sentencing determination, and the trial court's use of this decision to aggravate a Defendant's sentence offends the Fifth Amendment privilege against self-incrimination.<sup>8</sup>

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<sup>1</sup> Tape-recorded trial court record (hereinafter, "Tape").

<sup>2</sup> Appellee's memo, p. 1.

<sup>3</sup> Tape; Appellee's memo, p. 1.

<sup>4</sup> *Id.*

<sup>5</sup> Tape; Appellee's memorandum, p. 3.

<sup>6</sup> U.S. Const. Amend. V.

<sup>7</sup> *Id.*

<sup>8</sup> *State v. Hardwick*, 183 Ariz. 649, 656, 905 P.2d 1384, 1391 (App. Div. 1, 1995), citing *State v. Carriger*, 143 Ariz. 142, 162, 692 P.2d 991, 1011 (1984), *cert. denied*, 471 U.S. 1111, 85 L. Ed. 2d 864, 105 S. Ct. 2347 (1985); *State v.*

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An appellate court should not disturb a trial court's decision to impose an aggravated sentence if there are sufficient and appropriate aggravating factors to justify imposition of maximum sentences.<sup>9</sup> In this case, however, those factors are lacking. The trial court considered Appellant's lack of contrition an aggravating factor in imposing sentence. This was error.

IT IS THEREFORE ORDERED reversing the sentence imposed on Appellant by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this case to the Phoenix City Court for resentencing in a manner not inconsistent with this opinion.

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*Holder*, 155 Ariz. 80, 82-83, 745 P.2d 138, 140-41 (App. 1987), *vacated in part on other grounds*, 155 Ariz. 83, 745 P.2d 141 (1987).

<sup>9</sup> *Hardwick*, 183 Ariz. 649, 656, 905 P.2d 1384, 1391, citing *State v. Gillies*, 142 Ariz. 564, 573, 691 P.2d 655, 664 (1984), *cert. denied*, 470 U.S. 1059, 84 L.Ed.2d 834, 105 S. Ct. 1775 (1985).